Supreme Court, U.S.
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OFFICE OF THE CLERK

NO. _____

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1994

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KENNETH W. PETERS, M.D.,
*Petitioner,*

v.

POLK COUNTY, TEXAS, d/b/a POLK COUNTY MEMORIAL HOSPITAL,
*Respondent.*

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**Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit**

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## PETITION FOR WRIT OF CERTIORARI

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29 pp

## QUESTION PRESENTED

1. Whether the Fifth Circuit can, in clear contradiction of the Supreme Court's ruling in *Farrar v. Hobby*, 506 U.S. _____, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992), affirm *per curiam* the trial court's order that the plaintiff who prevailed on all four of his civil rights claims under 42 U.S.C. §1983 but obtained only nominal damages therefor cannot, as a matter of law, qualify as a "prevailing party" for attorney's fees under 42 U.S.C. §1988?

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POLK COUNTY, TEXAS, d/b/a POLK COUNTY MEMORIAL HOSPITAL,
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**Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit**

---

## PETITION FOR WRIT OF CERTIORARI

---

Petitioner Dr. Kenneth W. Peters respectfully prays that a writ of certiorari issue to review the judgment of the United States court of Appeals for the Fifth Circuit.

## OPINIONS BELOW

On July 30, 1992, the United States District Court for the Eastern District of Texas (Lufkin Division) entered its Order (Appendix A at page 1a) and Amended Final Judgment (Appendix B at page 4a) affirming the jury's verdict in favor of Petitioner on four civil rights counts under 42 U.S.C. §1983, awarding Petitioner nominal damages therefor, and, *inter alia*, denying Petitioner's motion for attorney's fees under 42 U.S.C. §1988.

On October 7, 1993, the United States Court of Appeals for the Fifth Circuit affirmed *per curiam* the judgment of the District Court. Appendix C at page 5a.

On November 2, 1993, the Fifth Circuit Court of Appeals entered its order denying Petitioner's Petition for Rehearing. Appendix D at page 6a.

## JURISDICTION

The trial court's Order and Amended Final Judgment were entered on July 30, 1992. The Fifth Circuit affirmed *per curiam* the judgment of the trial court on October 7, 1993. The Fifth Circuit denied Petitioner's Petition for Rehearing on November 2, 1993. This Court's jurisdiction is invoked under 28 U.S.C. §1254.

## STATUTES INVOLVED

**42 U.S.C. §1988:**

§1988. **Proceedings in vindication of civil rights; attorney's fees**

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 U.S.C. §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 U.S.C. §§ 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. §§ 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

**42 U.S.C. §11133(a)(1):**

REPORTING OF CERTAIN PROFESSIONAL REVIEW ACTIONS TAKEN BY HEALTH CARE ENTITIES.

(a) REPORTING BY HEALTH CARE ENTITIES.--

(1) ON PHYSICIANS. -- Each health care entity which --

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days... shall report to the Board of Medical Examiners, in accordance with section 424(a) [42 U.S.C. §11134(a)], the information described in paragraph (3)....

(3) INFORMATION TO BE REPORTED.__ The information to be reported under this subsection is--

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate....

**42 U.S.C. §11136:**

DISCLOSURE AND CORRECTION OF INFORMATION.

With respect to the information reported to the Secretary (or the agency designated under section 424(b)) under this part respecting a physician or other licensed health care practitioner, the Secretary

shall, by regulation, provide for....

(2) procedures in the case of disputed accuracy of the information.

**TEX. REV. CIV. STAT. ANN., art. 4495b, §5.06(a)&(b):**

Sec. 5.06. (a) The provisions of the Health Care Quality Improvement Act of 1986 (Public Law No. 99-660) apply to a professional review action taken by a professional review body in this state on or after the effective date of this Act [September 1, 1987].

(b) Each medical peer review committee or health-care entity shall report in writing to the board [Texas Board of Medical Examiners] the results and circumstances of any professional review action that adversely affects the clinical privileges of a physician while the physician is under an investigation by the medical peer review committee relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding, or in the case of an entity which is a professional society or association, takes a professional review action which adversely affects the membership of a physician in the society or association. The duty to report under this section shall not be nullified through contract.

## REGULATIONS INVOLVED

45 C.F.R. §60.6:

**Reporting errors, omissions, and revisions.**

(a) Persons and entities are responsible for the accuracy of information which they report to the Data Bank. If errors or omissions are found after information has been reported, the person or entity which reported it must send an addition or correction to the Data Bank or, in the case of reports made under §60.9, to the Board of Medical Examiners, as soon as possible.

(b) An individual or entity which reports information on licensure or clinical privileges under §§60.8 or 60.9 must also report any revision of the action originally reported. Revisions include reversal of a professional review action or reinstatement of a license. Revisions are subject to the same time constraints and procedures of §§60.5, 60.8, and 60.9, as applicable to the original action which was reported.

## STATEMENT OF THE CASE

The Fifth Circuit's opinion in this case clearly rejects the Supreme Court's ruling in *Farrar v. Hobby*, 506 U.S. ___, 113 S.Ct. 566, 121 L.Ed.2d 494, 1992 WL 362775 (December 14, 1992). At the District Court the jury found that the actions of Respondent Polk County both in terminating Petitioner Dr. Peters's medical staff privileges at the hospital and in denying him privileges at the hospital violated both his substantive and procedural due process civil rights under 42 U.S.C. §1983 (four counts total). The jury, however, awarded Petitioner no money damages. After the jury's verdict but before final judgment, the hospital refused Petitioner's request that it correct its tainted peer review actions. Petitioner sought 1) a declaratory ruling from the court that the hospital's actions were unlawful and null and void and 2) an injunction forcing the hospital to restore his privileges, to expunge its records of the flawed peer review action, and to correct the record for the benefit of third parties. Petitioner also sought attorney's fees under 42 U.S.C. §1988.

The court affirmed the jury verdict but denied Petitioner's request for injunctive relief on the ground that his injuries were conjectural rather than real and immediate. The court also denied Petitioner's request for attorney's fees, finding that Petitioner was not a "prevailing party" under *Estate of Farrar v. Cain*, 941 F.2d 1311 (5th Cir. 1991), because he had been awarded only nominal money damages. It is this latter issue of attorney's fees that prompts this Petition for Writ of Certiorari.

When the trial court decided this case on July 30, 1992, it relied on the Fifth Circuit's opinion in *Estate of*

*Farrar v. Cain*, 941 F.2d 1311 (5th Cir. 1991), *cert. granted, sub. nom., Farrar v. Hobby*, 112 S.Ct. 1159 (1992). In that case the Fifth Circuit held that a plaintiff who obtains only nominal damages for a constitutional deprivation *cannot* as a matter of law be considered a prevailing party for attorney's fees under 42 U.S.C. §1988. On the strength of that authority, the trial court ruled that Petitioner was not a "prevailing party" (Appendix A, page 1a), and the trial court declined to hear any evidence on what attorney's fees, if any, would be reasonable.

After the district court's decision in July, 1992, the Supreme Court in December, 1992, specifically rejected the Fifth Circuit's holding in *Farrar* on the "prevailing party" issue, ruling that a civil rights plaintiff who receives a nominal damages award *is* a "prevailing party" eligible to receive attorney's fees under 42 U.S.C. §1988 and ruling further that the Fifth Circuit had erred in holding that the nominal damages award to petitioners in that case failed to render them prevailing parties, that the "prevailing party" inquiry does not turn on the magnitude of the relief obtained, and that the amount of damages received by the plaintiff simply goes to the reasonableness of a fee award. *Farrar v. Hobby*, 113 S.Ct. at 570, 573 and 574.

Because the trial court had relied on the Fifth Circuit's *Farrar* decision in determining that Petitioner was not entitled as a matter of law to any attorneys' fees, the trial court had sought no evidence and conducted no inquiry on the issue of reasonable attorneys' fees. On the strength of the Supreme Court's opinion in *Farrar*, Petitioner appealed to the Fifth Circuit to remand the question of attorneys' fees back to the trial court for a determination of what fees, if any,

would be reasonable. Petitioner cited the Supreme Court's *Farrar* decision to the Fifth Circuit in his original brief, in his reply brief, during oral argument, and also in his Petition for Rehearing, yet the Fifth Circuit clearly rejected the Supreme Court's rule by simply affirming *per curiam* the trial court's decision (Appendix C at page 5a) and summarily denying the Petition for Rehearing (Appendix D at page 6a). Thus, either the Fifth Circuit has flouted the Supreme Court or the Fifth Circuit simply did not focus on Petitioner's appeal closely enough to notice the clear legal error caused by its *per curiam* affirmance of the trial court's decision. The questions asked of the parties by the three judge panel during oral argument certainly suggested that the panelists had not read the briefs prior to oral argument, and the fact that the Fifth Circuit's *per curiam* opinion was entered the day of oral argument suggests that neither the judges nor any of their staff had time to read the briefs or review applicable law after oral argument. Because the Fifth Circuit's *per curiam* opinion will have no precedential impact, its action in this case will not create a conflict between published opinions requiring further resolution by the Supreme Court. (Indeed, the Supreme Court has already resolved the issue presented in this case when it decided *Farrar* in December of 1992.) But Petitioner in this case has relied on the Supreme Court's holding in bringing his appeal, and now Petitioner has clearly been deprived of justice by the Fifth Circuit's easy rejection of the Supreme Court's dispositive instruction on this issue. Either the Fifth Circuit has rejected the Supreme Court's authority or the Fifth Circuit has been so indifferent and blase in its consideration of Petitioner's appeal that the judges simply missed the legal import of their affirmation of the trial court's decision. In either event, the three-judge panel has so far departed from the accepted and usual

course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision.

Subject matter jurisdiction at the district court was based on federal question. Petitioner's complaint in district court included a civil rights cause of action under 42 U.S.C. §1983 and other federal and ancillary state causes of action. Petitioner's appeal to the Fifth Circuit was an appeal of a final order of a U.S. Magistrate after the parties consented to trial before a Magistrate pursuant to 28 U.S.C. §636(c)(1). The Circuit Court had jurisdiction to hear this appeal pursuant to 28 U.S.C. §1291 and 28 U.S.C. §636(c)(3).

## REASONS WHY A WRIT OF CERTIORARI SHOULD ISSUE

The Fifth Circuit's opinion in this case clearly contradicts the Supreme Court's holding in *Farrar v. Hobby*, 506 U.S. ____, 113 S.Ct. 566, 121 L.Ed.2d 494, 1992 WL 362775 (1992). As indicated above, after the district court had entered its final judgement in Petitioner's case, the Supreme Court specifically rejected the Fifth Circuit's holding in *Farrar* on the "prevailing party" issue:

> We decide today whether a civil rights plaintiff who receives a nominal damages award is a "prevailing party" eligible to receive attorney's fees under 42 U.S.C. §1988.

*Farrar v. Hobby*, 113 S.Ct. at 570.

> We ... hold that a plaintiff who wins nominal damages *is* a prevailing party under §1988.

113 S.Ct. at 573 (emphasis added).

> [T]he Court of Appeals for the Fifth Circuit erred in holding that petitioners' nominal damages award failed to render them prevailing parties.... [T]he prevailing party inquiry does not turn on the magnitude of the relief obtained.... "[T]he *degree* of the plaintiff's success" does not affect "eligibility for a fee award" [quoting from *Texas State Teachers Assn. v. Garland Independent School Dist.*, 489 U.S. 782, 109 S.Ct. 1486 (1989)].

113 S. Ct. at 574. The Supreme Court went on to say that the amount of damages received "goes to the

reasonableness of a fee award" (quoting from *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933 (1983).

It is well-settled that when the controlling law has changed between the entering of a decision below and the consideration of the matter on appeal the case should be decided in light of the law existing at of the time of the appellate decision. *Bradley v. School Board of City of Richmond et al.*, 416 U.S. 696, 94 S.Ct. 2006 (1974); *Carroll v. General Acc. Inc. Co. of America*, 891 F.2d 1174 (5th Cir. 1990). This rule is especially true when the change in the law is not some new intervening statute that might present a question of whether it was intended to apply retroactively but is simply a judicial construction of the proper application of a statute that itself has remained unchanged.

Accordingly, the proper inquiry for the Fifth Circuit in this case was not whether the trial court erred under the law applicable at the time of its decision or whether the trial court abused its discretion or was arbitrary or capricious. Rather, the proper inquiry the Fifth Circuit would have been the *de novo* determination whether the district court's conclusion that Petitioner was not a "prevailing party" (regardless of the appropriateness of that holding at the time it was made) could stand under new Supreme Court authority issued since the trial court made its determination. Clearly it could not.

Petitioner Dr. Peters had had no opportunity to offer evidence or make his case for what attorneys' fees, if any, would have been reasonable in the case at bar. While the Supreme Court proceeded in *Farrar* to determine that no attorney's fees were reasonable in *Farrar* based on the facts of that case, it is important to note that the Supreme Court had before it the full

record of the evidentiary proceedings below on the issue of reasonableness of attorney's fees. There has been no hearing in Petitioner's case on that issue because the trial court ruled that Petitioner was not a prevailing party -- a ruling no longer sustainable under the Supreme Court's decision in *Farrar*.

Further, the facts of this case differ materially from those in *Farrar*. Through this lawsuit, Petitioner sought not only to redeem his professional reputation but also to recover money damages. It is undisputed that as a result of Respondent Polk County's unlawful actions Petitioner was kicked off the medical staff at the hospital and that Petitioner was forced to relocate his medical practice to another town (Respondent Memorial Hospital being the only hospital in Livingston, Texas). Petitioner's resulting damages could have been enormous. Fortunately, Petitioner was able to mitigate his damages. As a credit to his abilities and competence, his medical practice flourished in another town after he was driven out of Livingston, and his income soon surpassed what he had been earning while practicing in Livingston. Petitioner's discharge of his legal obligation to mitigate his damages, however, should not work a detriment against him with respect to reasonable attorney's fees he has already incurred. The facts remain that Respondent turned him out of the hospital, drove him out of town, and filed a report of adverse action against him with the Texas Board of Medical Examiners -- all based on proceedings which have been judicially determined to have been unlawful. The jury verdict and judgment finding Respondent's actions unlawful constitute more than just a nominal or technical victory, as was obtained in *Farrar*. The jury found Respondent's actions to be both unfair and unreasonable.

As such, Respondent's adverse actions against Petitioner, rather than remaining valid, are now flawed and subject to correction not only appropriate but *required* by law. After it unlawfully drove him out of the hospital, Respondent issued a formal report of adverse peer review action to the Texas Board of Medical Examiners pursuant to the reporting requirements of the federal Health Care Quality Improvement Act of 1986 (42 U.S.C. §11133(a)(1)) and the Texas Medical Practice Act (TEX. REV. CIV. STAT. ANN., art. 4495b, §5.06(a)&(b)). Reports of adverse medical staff privilege actions filed by hospitals with the Texas Board of Medical Examiners must be forwarded by that Board to the National Practitioner Data Bank in Baltimore. 42 U.S.C. §11133(b) and §11134(a); 45 C.F.R. §§60.4, 60.5 & 60.9. Federal law also requires a hospital to file a corrective report if an earlier reported action has been subject to error, omission or revision:

> §60.6 **Reporting errors, omissions, and revisions.**
>
> (a) Persons and entities are responsible for the accuracy of information which they report to the Data Bank. If errors or omissions are found after information has been reported, the person or entity which reported it must send an addition or correction to the Data Bank or, in the case of reports made under §60.9, to the Board of Medical Examiners, as soon as possible.
>
> (b) An individual or entity which reports information on licensure or clinical privileges under §§60.8 or 60.9 must also report any revision of the action originally reported. Revisions include reversal of a professional review action or reinstatement of a license. Revisions are subject to the same time

> constraints and procedures of §§60.5, 60.8, and 60.9, as applicable to the original action which was reported.

45 C.F.R. §60.6. Certainly, Respondent's actions regarding Petitioner's staff privileges were in error, as found by the jury. Yet even after the jury returned its verdict finding that Respondent's actions were unlawful, the hospital still refused to acknowledge any error regarding Petitioner's medical staff status or otherwise to correct the record in any way. Filing a corrective report with the Board of Medical Examiners would have cost Respondent no money or caused it any hardship. Respondent's fervent intransigence on this issue is astonishing and incomprehensible unless perceived in the context of Respondent's desperate desire to avoid any liability for attorneys' fees reasonably incurred by Petitioner in seeking and obtaining his judgment that the hospital's adverse action against him was both unreasonable (substantive due process) and unfair (procedural due process). The tail is wagging the dog here, as far as Respondent is concerned, artificially skewing Respondent's actions in a manner to deprive Petitioner of the relief he has demonstrated he is entitled to after time-consuming and expensive litigation.

Petitioner's victory is hardly technical, as was found by the Supreme Court in *Farrar*. He has through prodigious effort and much sacrifice successfully mitigated his damages, but even that effort does not erase the black mark against him caused by Respondent's ousting him unlawfully from the hospital medical staff. *Farrar* says that a civil rights plaintiff who recovers nominal money damages is entitled to reasonable attorney's fees. The issue to be determined is what fees are reasonable. The judgment below has

changed the legal relationship between Petitioner and Respondent, and Petitioner has clearly obtained at least some relief on the merits of his claim. Following the judgment, Respondent is required to modify its conduct toward Petitioner at the very least by correcting its errors and notifying the Texas Board of Medical Examiners of the errors corrected. 45 C.F.R. §60.6. Respondent simply compounds its errors by continuing to refuse to make amends even after the jury verdict. Now not only is the adverse action judicially determined to have been unlawful, but Respondent's refusal to issue a correcting report or take any other action to modify its position is also unlawful and remains unlawful for so long as Respondent remains intransigent. Respondent should not be allowed to benefit from its continued unlawful and unwarranted conduct by claiming that because it has refused to act lawfully it has avoided a material alteration of its relationship with Petitioner.

Petitioner is entitled at least to be heard on the issue of reasonable attorney's fees. The Supreme Court in *Farrar* noted that the trial court is the proper tribunal for such a determination, but the Supreme Court decided to rule itself on the attorney's fees issue in *Farrar* not only because it already had before it a record of the full evidentiary proceedings of the trial court on the attorney's fee issue, but also because it found "special circumstances" in *Farrar* that permitted the Supreme Court to conclude that reasonable attorneys fees in that case were zero. There are no such "special circumstances" in this case, and Petitioner is entitled to address that issue before the fact finder.

As such, Petitioner respectfully urges that the only appropriate course for the Fifth Circuit to have followed on the attorneys' fee issue would have been to reverse

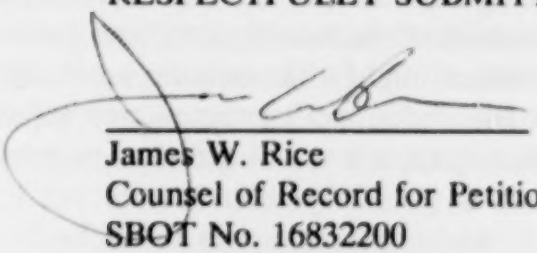
the trial court, because the legal basis for the trial court's original determination has since been clearly rejected by the Supreme Court. The next appropriate determination for the Fifth Circuit would have been to remand the case back to the trial court for a determination of reasonable attorneys fees. That determination might ultimately be substantial or it might be zero, but under the Supreme Court's *Farrar* decision that determination is a fact question properly before the trial court.

Because the Fifth Circuit's *per curiam* opinion will have no precedential impact, its action in this case will not create a conflict between published opinions requiring further resolution by the Supreme Court. (Indeed, the Supreme Court has already resolved the issue presented in this case when it decided *Farrar* in December of 1992.) Nonetheless, the Fifth Circuit has clearly decided a federal question in a way that conflicts with the governing decision of the Supreme Court opinion Petitioner in this case has relied on the Supreme Court's decision and the authority of the Supreme Court in bringing his appeal, and now Petitioner has clearly been deprived of justice by the Fifth Circuit's easy rejection of the Supreme Court's dispositive instruction on this issue. Either the Fifth Circuit has rejected the Supreme Court's authority or the Fifth Circuit has been so indifferent and blase in its consideration of Petitioner's appeal that the judges simply missed the legal import of their affirmation of the trial court's decision. In either event, the three-judge panel has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision. Petitioner accordingly respectfully requests that this honorable Court issue a writ of certiorari to the United States

Court of Appeals for the Fifth Circuit.

Dated: January 28, 1994.

RESPECTFULLY SUBMITTED,



James W. Rice
Counsel of Record for Petitioner
SBOT No. 16832200
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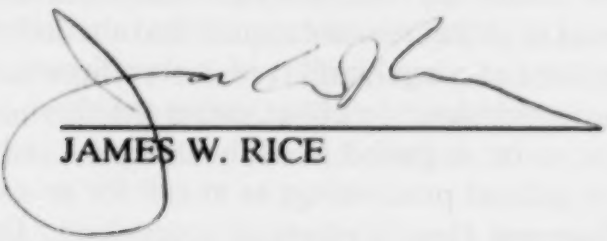
Houston, Texas 77002
713-751-0133

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Petition for Writ of Certiorari has been deposited in the U.S. Mail, Certified Mail, Return Receipt Requested, this 31st day of January, 1994, to Mr. Don Karotkin, Esq., Funderburk & Funderburk, 2777 Allen Parkway, Suite 1080, Houston, TX 77019, attorney for Respondent Polk County, Texas.



JAMES W. RICE

## APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

| | | |
|---|---|---|
| KENNETH W. PETERS, M.D. | § | |
| | § | |
| V. | § | CIVIL ACTION |
| | § | NO. 9:88CV179 |
| LAKE LIVINGSTON MEDICAL CENTER, ET AL. | § | |

ORDER

Four motions are pending before the Court:

(1) Plaintiff's motion for attorney fees (docket #172),
(2) Motion of Defendant's Bill Ingram, M.D., Raymond Neuman, M.D. and Michael Shukan, M.D. to alter or amend judgment (docket #181),
(3) Motion of Defendant Polk County to alter or amend judgment (docket #175), and
(4) Plaintiff's motion for declaratory and injunctive relief (docket #181).

Having carefully considered the motions of the parties, the Court finds that Plaintiff's motion for attorneys' fees should be **DENIED**. In light of *Estate of Farrar v. Cain*, 941 F.2d 1311 (5th Cir. 1991), *cert. granted, sub. nom., Farrar v. Hobby*, 112 S.Ct. 1159(1992), I find that Plaintiff is not a prevailing party.

The Court further finds that the motion of

Defendants Neuman, Ingram and Shukan to alter or amend judgment should be **GRANTED in part** and **DENIED in part**. The motion is **GRANTED** to the extent that the final judgment filed on April 29, 1992, shall be amended to provide that both the individual Defendants and Plaintiff shall each bear their own costs. The motion is **DENIED** as to Defendants' request that the judgment be altered, amended, or modified to award attorneys' fees to the Defendants. In light of *Mylett v. Jeane*, 910 F.2d 296, 299 (5th Cir. 1990). I find the Defendants named above are precluded from an award of attorneys' fees by the Court's finding herewith that the Plaintiff's action was not frivolous, unreasonable, or without foundation.

The Court further finds that the motion of Defendant Polk County to alter or amend judgment should be **DENIED**. Federal Rule of Civil Procedure 54(d).

Furthermore, the Court finds that Plaintiff's motion injunctive and declaratory relief should be **DENIED**. Plaintiff lacks standing for injunctive in that the complained of injuries are conjectural rather than real and immediate. *See Henschen v. City of Houston, Texas*, 959 F.2d 584, (5th Cir. 1992). It is therefore

**ORDERED** that the motion of Defendants Neuman, Ingram and Shukan to alter or amend final judgment be **GRANTED** in part and amended judgment providing that the individual Defendants and Plaintiff shall bear their own costs shall be entered. This motion is **DENIED** as to Defendants' request for an award of attorneys' fees against Plaintiff. It is further

**ORDERED** that Defendant Polk County's motion

to alter or amend judgment is **DENIED**. It is further

**ORDERED** that Defendant Polk County's motion to alter or amend judgment is **DENIED**. Finally, it is

**ORDERED** that Plaintiff's motion for injunctive and declaratory relief be **DENIED**.

**SIGNED** this 30th day of July, 1992.

## APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

| | | |
|---|---|---|
| KENNETH W. PETERS, M.D. | § | |
| | § | |
| V. | § | CIVIL ACTION |
| | § | NO. 9:88CV179 |
| LAKE LIVINGSTON MEDICAL CENTER, ET AL. | § | |

AMENDED FINAL JUDGMENT

This action came on for trial before the Court and a jury, and the issues having been duly tried and the jury having duly rendered its verdict, and in accordance with the Court's memorandum opinion and order issued this date,

It is **ORDERED** and **ADJUDGED** that the Plaintiff, Kenneth W. Peters, recover from Defendant Polk County, Texas, the sum of Four Dollars ($4.00) and his cost of action against Polk County. It is, further, **ORDERED** and **ADJUDGED** that Plaintiff take nothing against the remaining Defendants and Plaintiff and the remaining Defendants shall bear their own costs of action.

**SIGNED** this 30th day of July, 1992.

## APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4886

KENNETH W. PETERS,
Plaintiff-Appellant,

versus

POLK COUNTY MEMORIAL HOSPITAL,
Consolidate Plaintiff-
Defendants-Appellee,

LAKE LIVINGSTON MEDICAL CENTER, ET AL.,
Defendants-Appellees.

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Appeal from the United States District Court for the Eastern District of Texas (9-88-CV-179)

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Before JOHNSON, WIENER, AND DeMOSS, Circuit Judges.

PER CURIAM:*

The judgment of the district court is AFFIRMED. See Fifth Circuit Local Rule 47.6.

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

## APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4886

KENNETH W. PETERS,
Plaintiff-Appellant,

versus

POLK COUNTY MEMORIAL HOSPITAL,
Consolidate Plaintiff-
Defendant-Appellee,

LAKE LIVINGSTON MEDICAL CENTER, ET AL.,
Defendants-Appellees.

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Appeal from the United States District Court for the
Eastern District of Texas

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ON PETITION FOR REHEARING
( November 2, 1993 )

Before JOHNSON, WIENER, AND DeMOSS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

Clerk's Note: See FRAP and Local Rules 41 for the stay of the mandate.